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1 Michael Harkey, Plaintiff
2 Pro Se

3 2015 SEP 23 P 12:16

4 **UNITED STATES DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6 MICHAEL HARKEY,
7 Plaintiff and Proposed Lead Class
8 Plaintiff for All Nevada Property
9 Owners Similarly Situated,
10 who were deprived of their
right to petition the judiciary
for redress of grievances by
the use of fraudulent recorded
documents by the *MERS®-LPS*
RACKETEERING ENTERPRISE
11 described herein,

Plaintiff,

12 vs.

13 US BANK, N.A., AS TRUSTEE FOR THE
14 CSMC MORTGAGE-BACKED TRUST 2007-
15 6; CSMC MORTGAGE-BACKED TRUST
16 2007-6; CREDIT SUISSE FIRST BOSTON
17 MORTGAGE SECURITIES CORPORATION;
DLJ MORTGAGE CAPITAL, INC.; SELECT
18 PORTFOLIO SERVICING, INC.; WELLS
FARGO BANK, N.A.; MERSCORP
19 HOLDINGS, INC.; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC.; QUALITY LOAN SERVICE
20 CORPORATION; BLACK KNIGHT
FINANCIAL SERVICES, LLC formerly
21 known as LENDER PROCESSING
SERVICES, INC.; JESSIE BEWLEY; SHOUA
MOUA; CHRISTINA ALLEN; FIDELITY
22 NATIONAL FINANCIAL, INC.; BILL
KOCH; KIMBERLY CLARK; VANESSA
23 GONZALES; MICHELLE NGUYEN;
SAFEGUARD PROPERTIES, LLC; ADAM
24 FENN; EARL BEUTLER; EVE BEUTLER;
DOES I-XX and ROE CORPORATIONS I-XX,
25 inclusive.
Defendants.

26 Case No.: 2:14-cv-00177-RFB-GWF

27 **PLAINTIFF'S GENERAL
OPPOSITION TO ALL
DEFENDANTS' MOTIONS
TO DISMISS AND REQUEST
FOR LEAVE TO SUPPLEMENT
RESPONSE WITH ASSISTANCE
OF INCOMING COUNSEL**

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10 PLAINTIFF MICHAEL HARKEY HEREBY OFFERS GENERAL OPPOSITION TO
11 THE VARIOUS MOTIONS TO DISMISS FILED BY DEFENDANTS. Plaintiff respectfully
12 requests leave for supplemental response filing, to be submitted by incoming counsel Mitchell
13 Posin on or before October 1st 2015, for a more thorough record and response. This request is
14 due in part to Defendants' concerted avalanche of motions and Plaintiff's desire to be timely and
15 forthright in the interest of judicial economy.

16 Plaintiff, succinctly, however, would hasten to parry claims and positions contended by
17 Defendant Michelle Nguyen and her representatives who have taken to much dedication in
18 misapprehending Plaintiff's contentions.

19 First and foremost, the property located at 2220 Village Walk Drive, Unit 3315,
20 Henderson, Nevada 89052, IS NOT the lawful property of anyone other than Plaintiff Michael
21 Harkey, on a wide array of factors well grounded in law:

22 There has never been a foreclosure undertaken in respect to the property, as Defendant's
23 actions were far and away outside the contours of Nevada's enumerated statutes governing non-
24 judicial foreclosure. See NRS CHAPTER 107 et seq.; rather, a false trustee, that being
25 Nguyen's then-employer, Quality Loan Corporation (QLC), accepted a phony credit bid - BY
26 UNAUTHORIZED, FALSE BENEFICIARY U.S. BANK, N.A., PURPORTEDLY AS
27 TRUSTEE FOR, on information and belief, for a non-existent trust. The actions taken on that
28 day of January 12, 2009, were void not just on the premises described above, but also because
29 such actions occurred in violation of the Automatic Stay that took effect on the very day, when
30 Plaintiff filed his Petition for Bankruptcy protection, see In re: *Hudson, Bankr.* LEXIS 219
31 (BAP 9th Cir. Jan 14, 2014), and, with reference to ratification, ratification could not be had in
32 this case because the steps leading to the taking of Plaintiff's home involved false documents
33 that were in any event out-of-time assignments and appointments, and because US Bank never

1 ascended to lawful status as valid beneficiary for ratification purposes. Compare *Karon J.*
 2 *Nelson et al. v. FIRST HORIZON HOME LOAN CORP.*, 3:11-cv-00562-RCJ-WGC ORDER,
 3 July 9, 2012.

4 Nguyen and her counsel seem to suggest that notarization without the presence of the
 5 signor is not much over which to ado. This nonchalant minimization of notary misconduct was
 6 vigorously rebuked by the Washington Supreme Court in a stinging admonitory against QLC,
 7 authored by the late Justice Tom Chambers, wherein Justice Chambers characterized such
 8 actions a crime in Washington as well a California (where QLC is headquartered and where the
 9 notarial act occurred; the document was perpetrated in Washington), offering this reasoning:

10 [¶ 42] “Quality suggests these falsely notarized documents are immaterial because the
 11 owner received the minimum notice required by law. This no-harm, no-foul argument
 12 again reveals a misunderstanding of Washington law and the purpose and importance of
 13 the notary's acknowledgment under the law. A signed notarization is the ultimate
 14 assurance upon which the whole world is entitled to rely that the proper person signed a
 15 document on the stated day and place. Local, interstate, and international transactions
 16 involving individuals, banks, and corporations proceed smoothly because all may rely
 17 upon the sanctity of the notary's seal.” (also noting evidence that Quality notaries, in this
 18 case, from at least 2004-2007, regularly falsified the date on which documents were
 19 signed) See *Klem vs. WASHINGTON MUTUAL*, 87105-1WA Supreme Court
 20 (Feb 28, 2013)

21 “This court does not take lightly the importance of a notary's obligation to verify the
 22 signor's identity and the date of signing by having the signature performed in the notary's
 23 presence. *Werner v. Werner*, 84 Wash.2d 360, 526 P.2d 370 (1974). As amicus
 24 Washington State Bar Association notes, ‘The proper functioning of the legal system
 25 depends on the honesty of notaries who are entrusted to verify the signing of legally
 26 significant documents.’ Amicus Br. of WSBA at 1. While the legislature has not yet
 27 declared that it is a per se unfair or deceptive act for the purposes of the CPA, it is a
 28 crime in both Washington and California for a notary to falsely notarize a document.”

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1 Thus on information and belief Plaintiff stands by his position on all of the Defendants,
 2 including Nguyen in her personal capacity as well as her capacity as Employee of Quality Loan,
 3 whose activities via its pattern of practices, *ipso facto*, trigger civil and criminal statutes.
 4 Moreover, Plaintiff posits that the file on this case is replete with adequate information to
 5 soundly defeat Defendant's motions to dismiss, collectively and otherwise. Not a single
 6 document filed in the public record, by any of the defendants regarding Plaintiff's home at 2220
 7 Village Walk Drive, Unit 3315, Henderson, Nevada 89052, is either legal or valid; in this regard,
 8 Quality was never an authorized trustee, and hence Nguyen was not entitled to designate via
 9 notarization U.S. Bank, N.A., as trustee to a trust or any other entity, owner of title to Plaintiff's
 10 home, which she did falsely and in violation of law. Nguyen's grievance should be with her co-
 11 conspirator/former employer, QLC.

12 The defense of statute of limitations time bar is misplaced here as well. According to
 13 defendants, Plaintiff's claims/causes of action are time-barred to the extent they are based on
 14 fraud, which under Nevada's revised statutes carries three years. While there are grounds to
 15 justify tolling in this case, Plaintiff need not visit upon this Court such a topic because his
 16 discovery of the various crimes and deprivation of due process a/ procedural due process rights
 17 and initiation of court action based thereon fall squarely within timelines prescribed under the
 18 law. Plaintiff began hearing information on television during the weeks leading to Christmas,
 19 2011, and all the way through 2013. The information entailed, among other things that Lender
 20 Processing Services employees Joseph Noel, Tracey Lawrence (now deceased), and others who
 21 were said to have falsely notarized and/or forged documents for purposes of foreclosing on
 22 homes of Nevada citizens. While Nevada's statute of limitations for fraud-based claims is three
 23 years from accrual, a fraud claim does not accrue until the aggrieved party discovers "the facts
 24 constituting the fraud." Nev. Rev. Stat. 11.190(3)(d).

25 Moreover, the last predicate act pertaining to Plaintiff's RICO contentions occurred in
 26 October, 2010, when US Bank and whichever entity for which it purports to have acted unjustly
 27 enriched themselves when the bank falsely, ie., under false color of entitlement/authority
 28 conducted a sham sale of Plaintiff's home at Village Walk Drive to Earl and Eve Beutler and
 29 their Beutler Trust. Plaintiff's gravamen position with respect to the events that brought him and
 30 Defendants before this Honorable Court is founded ultimately on the Latin Phrase:

nemo dat qui non habet “He who hath not cannot give.” Black’s 4th p. 1189

2 In this case, Defendants' actions, singularly and in concert, led to the taking, unlawfully, of his
3 home and all of its furnishings including furniture, artwork, bed-sets, appliances, everything
4 down to Plaintiffs socks and underwear. Plaintiff avers that the question of whether the
5 discovery rule tolls the limitations periods as an issue in this case is, alternatively, a fact-based
6 inquiry not suitable for resolution at this dismissal stage, as all allegations are presumed to be
7 true. See, e.g., *Saachi v. MERS*, Case No. CV 11-1658 AHM (CWx) D.C. Cal June 24, 2011.

8 On a final note, Plaintiff, in respect to the repudiation of the MERS executory contract, at
9 least one court has asserted the inefficacy of a MERS assignment after New Century rejects it
10 during bankruptcy proceedings, *DiLibero v. Mortgage Electronic Registrations Systems Inc.*, et
11 al., Rhode Island Supreme Court, No. 2013-190-Appeal (PC 11-4645), and a respected jurist of
12 this Court has already found in *Hymas v. Deutsche Bank National Trust Company*, No 2:13-cv-
13 01869-RCJ-GWF, December 22, 2014, that MERS could not in any event assign anything on
14 behalf of New Century after July 15, 2008, because New Century was no longer in existence,
15 i.e., it ceased to exist effective July 15, 2008.

16 Plaintiff's counsel endeavored earnestly and tirelessly to decipher and discern for the
17 Court's enlightenment MERSCORP, MORTGAGE ELECTRONIC REGISTRATION
18 SYSTEMS, INC., and the MERS-System, each of which wears the acronym MERS.
19 The findings are based on trenchant analysis that can withstand the harshest scrutiny, unlike the
20 subjects themselves, whose interspersal of the acronym MERS has spawned undying upheaval
21 and disembowelment of the integrity of our nation's land records, and through whose system
22 self-dealing and fraud prevail as the prominent elements. Cf. In re *Franklin*, Case No. 10-20010
23 (RDD), January 29, 2015, fn 7, fn 19.

CONCLUSION

Plaintiff Michael Harkey, for reasons foregoing, and based on the record and files,
OPPOSES and RESISTS all motions filed by Defendants.

28 Dated this 23rd day of September, 2015

Michael Harkey
Michael Harkey, Plaintiff Per Se

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13 NOW, THEREFORE,

14 It is ORDERED

15 That Plaintiff's incoming counsel Mitchell Posin, shall be permitted to supplement the record in
16 response to the bevy of motions filed by Counsel for Defendants, timeline to be determined by
17 this Court.

18 Dated: _____ 2015

19 BY THE COURT:

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22 U.S. District Judge / Magistrate Judge

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26 CERTIFICATE OF SERVICE

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28 I HEREBY CERTIFY that I have caused the foregoing PLAINTIFF'S GENERAL OPPOSITION
29 TO ALL DEFENDANTS' MOTIONS TO DISMISS AND REQUEST FOR LEAVE TO
30 SUPPLEMENT RESPONSE WITH ASSISTANCE OF INCOMING COUNSEL to be presented

1 to the Clerk of the United States District Court for the District of Nevada to be imaged
2 electronically and thereby filed and served on all parties capable of service by CM/ECF on the
3 23rd of September, 2015,

4
5 Michael Harkey
6 Michael Harkey